

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.141 OF 2005

Mohammed Tabarak Hussein.
Versus.
Amrut Ashok Rajani and others.

... Appellant.
...Respondents.

Shri Firoz A.Ansari for the Appellant.

Shri A.M.Saraogi for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 15th February, 2005.

P.C.:

1. The challenge in this Appeal is to the order dated 23rd June 2004 passed by the trial Court on Notice of Motion No.2237 of 2004. The Appellant is the Defendant No.1. The prayer (a) of the Notice of Motion taken out by the Respondent No.1/original Plaintiff reads thus:

(a) That this Hon'ble Court may be pleased to pass an appropriate order and direction directing the Respondents to render necessary assistance to the Plaintiff to prevent the Defendant No.1 from encroaching upon any portion of land and/or from installing any such stall and/or carrying out any such construction in the front portion of the Plaintiffs premises in any manner whatsoever."

2. It is not in dispute that in the same suit a Notice of Motion bearing No.3662 of 2003 was taken out by the Respondent No.1 against the Appellant and the said Motion was finally decided on 25th March 2004 by passing the following order:

- 1) Notice of Motion No.3662/03 is made absolute in terms of prayer clause A.
- 2) There is no order as to costs.
- 3) Pending the hearing and final disposal of the suit defendant No.1 by himself, his agents, servants, representatives and/or any person claiming through or under him are restrained by an order of injunction of this Court from putting up any stall/Bakada in front of premises Shreeman building situated on the property bearing survey No.41(part) Plot No.E-10, CTS No.608, Link Road, Oshivara, Andheri, Mumbai-58.
- 4) Defendant No.2 Corporation also restrained from granting permission in favour of defendant No.1 for putting up the stall/Bakda.
- 5) Defendant no.2 are directed to take necessary action to prevent defendant No.1 from putting up any stall/Bakda from in any manner of whatsoever

nature.

- 6) Suit adjd. to 15.6.2004 for service of writ of summons upon defendant Nos.1 and 2.

The said order dated 25th March 2004 has attained finality in the sense that the Appeal from Order preferred by the present Appellant for challenging the said order has been dismissed.

3. Shri Ansari, the learned Counsel for the Appellant submitted that the order of injunction which is operating in favour of the Respondent No.1 is in respect of the property described in clause 3 of the operative part of the Judgment and Order dated 25th March 2004. He submitted that by the impugned order the earlier order dated 25th March 2004 is sought to be implemented in respect of another property which is not the subject matter of the suit.

4. I have considered the submissions. Firstly it is to be noted that the Appellant has not filed any reply to the Notice of Motion No.2237 of 2004 and the said Notice of Motion is not contested by the Appellant. The only order of temporary injunction operating in favour of the Respondent No.1 is the order dated 25th March 2004 in Notice of Motion No.3662 of 2003. It is therefore obvious that it is this order of temporary injunction

which will be implemented by the impugned order dated 23rd June 2004.

5. In view of this position, there is no substance in the apprehension expressed by Shri Ansari that by using the impugned order restraint will be put on the Appellant in respect of the property which is not the subject matter of the order dated 25th March 2004.

6. Subject to what is stated above in paragraph No.4, there is no merit in the Appeal and the same is dismissed with no order as to costs.

7. The parties to act on an authenticated copy of this order.

Judge.